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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1962.

No. 545

CHARLES W. JAMIESON,

Appellant,

vs.

CHICAGO TITLE AND TRUST CO., a corporation of Illinois, and WILLIAM H. AVERY, JOHN W. BAIRD, LAIRD BELL, ALBERT Y. BINGHAM, JOHN D. BINKLEY, CHESTER R. DAVIS, GEORGE H. DOVENMUEHLE, JAMES C. DOWNS, JR., PERCY B. ECKHART, GEORGE P. EDWARDS, NEWTON C. FARR, JOSEPH B. FLEMING, PAUL W. GOODRICH, J. PARKER HALL, HAROLD A. MOORE, LEO J. SHERIDAN, FOREST D. SIEFKIN, GARDNER H. STERN and JOSEPH D. STOCKTON, directors and JOHN WADDELL, its Treasurer,

Appellees.

REPLY TO MOTION TO DISMISS APPEAL
and
BRIEF IN SUPPORT THEREOF

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STATEMENT

The appellees made misstatements in their motion to dismiss, which will be elaborated upon should this Honorable Court indulge oral argument.

Appellees, despite their citing United States Supreme Court cases which however, are not in point, as well as Illinois Supreme Court cases, particularly *Lewis* v. *West*, etc., 376 Ill. 23, 32 N.E. (2) 907, which has since been "exploded", are apparently still thinking in *local* terms.

ARGUMENT

In appellant's Brief he has termed Sec. 157.156 of Chap. 32 of Illinois Code void and unconstitutional and, if permitted to prevail, would have a deleterious effect upon every holder of stock issued by Illinois corporations, both within and without the State of Illinois.

"Appellant's federal rights prevent application of this state statute as to him".

Non-federal grounds found to be a mere pretext to evade decision of federal question.

Cornell v. Grand, etc., 225 U.S. 246 (261).

That said statute was unconstitutional on its face; that it was retroactive and therefore universally void; that it was unconstitutional in its terms *viz.* All corporations including public utility corporations heretofore organized for profit under any special law of this state, for a purpose or purposes for which a corporation might be organized under this Act, shall be entitled to the rights, privileges, immunities and franchises provided by this Act.

The above Act embraces two subjects contrary to the Constitution as it endeavors to cover private business corporations for profit and, public utilities corporations not necessarily for profit, in the one act.

Public Utilities corps. have their own separate Chap. 111⅔, wholly unrelated.

Art. 4 Sec 13 of the State Constitution reads, in part (sufficient for the case in question), "No Act hereafter passed shall embrace more than one subject and that shall be expressed in the title".

The opposition, in their brief misquoted the above statute thusly. "The provisions of this Act shall apply to all existing corporations organized under any general law of this State" (the rest of the Act not being pertinent here) leaving out that part of the Act which made said section additionally unconstitutional viz. "including public utility corporations".

In *Klein v. Chicago T and T Co.*, 295 Ill. Ill. App. 208, 14 N.E. 852, it was said that the denial by a trustee of the trust relation is a breach of trust and a flagrant fraud.

Investments of trustees are supervised in England and Canada.

By this above deletion the trial court was additionally induced to hold this section constitutional, thereby aiding the Court in holding against plaintiff.

Ownership of stock in a corporation which is a party to litigation before the Court is ordinarily such an interest as to disqualify the judge owning the stock.

In re Honolulu etc., 243 Fed. 348.

Biased or prejudicial rulings are proper for consideration on appeal.

Whitaker v. McLean, 118 F. 2nd 596.

Judge shall disqualify himself when having connection with a party to the suit.

Title 28 U.S.C. 455.

State v. Foster, 81 F. Supp. 280.

Doran v. Killits, 8 F. 2d 880.

Injurable error for judge to try a case that he was interested in.

Stringer v. U. S., 233 Fed. 2d 947, and four other cases.

In its decision the Appellate Court, under No. 48469 was in error in misquoting Sec. 157.156 of said Chap. 32 when it misquoted thusly. *viz.*, "The provisions of this Act shall apply to all existing corporations, organized under any general law of this State providing for the organizing of corporations for a purpose or purposes for which a corporation might be organized under this Act. Leaving out "including public utilities corporations", in its decision in aid of the Defense.

This Sec. 157.156 is retroactive universally and, in this instance, intended in aid of corporations organized before the Business Corporation Act was extant *viz.* July 13, 1933.

This Sec. 157.156, if permitted to prevail, will have a sinister interstate effect caused by pressure groups elsewhere wanting like benefits.

What would any layman have an inclination to do even if properly advised, in the face of this situation, holding securities emanating from any corporation incorporated in Illinois.

If Sec. 157.156 is allowed to prevail, that situation would endanger the position of holders of securities issued by corporations incorporated in Illinois which could issue securities with promiscuous abandon, the Secretary of State losing that degree of control vital to supervision made necessary by long experience. The effect would, of course be interstate, wherever there are stock exchanges handling unlisted as well as listed securities.

The position taken by the trial court and the Appellate Court as well as the Supreme Court of Illinois as against the plaintiff-appellant contravene Sec. 1 of the Fourteenth Amendment of the Constitution of the United States.

The Supreme Court of Illinois has avoided a construction of this unconstitutional, retroactive Sec. 157.156 of Chap. 32, doubtlessly because it was inserted in the Business Corporation Act to "*Appease pressure groups*". Its silence is immaterial and cannot destroy the right to appeal under Sec. 1257 (2).

Did the Supreme Court of Illinois fear considering the conformity or non-conformity of the state statute in question, with the provisions of the United States Constitution feeling, that if it did it would be exceeding its jurisdictional powers?

Commissioner may change his mind when he believes he has made a mistake in law or in fact. But his action cannot be retroactive.

Lessing v. Commr., 238 F. 2d 589 (591-3).

Like pressure groups in sister states would follow this trend until this precarious situation was brought to the notice of the Securities and Exchange Commission.

Constitutional law must be depended upon, as, unlike the Congress, the Legislature is inclined to move away from its obligation of primary responsibility to the average citizen rather than to any business group.

Greenhood, Rule 98, Contrary to Public Policy—Doctrine.

When money is paid to one, in consideration of something opposed to public policy or, on a contract opposed thereto, and the money belongs to another who has no connection with the transaction and he sues, he can recover.

It is the office of the Federal Courts to declare unconstitutional Acts of the State Legislature.

Shelley v. Kraemer, etc., 334 U.S. 1.

Supreme Court will review a state court's findings "Where a Federal right has been denied as a result of a finding shown by the record to be without evidence to support it.

Legislative setting should be considered.

U. S. v. *Bankers etc.*, 294 U.S. 240.

Court will consider the entire statute.

Buck v. *Gibbs*, 34 F. Supp. 510.

It is the duty of the Court always zealously to guard the constitutional rights of citizens.

Togosabais v. *U. S.*, 323 U.S. 214.

Determination of a constitutional question is necessary and proper, when essential to the decision of a case.

Stefanelli etc. v. *Minard*, 342 U.S. 117.

Patty v. *U. S.*, 220 F. 2d 473.

A corporation, even though it may have the power to take and hold shares of stock in other corporations as an investment or as collateral security for a loan or in payment of a debt, has no power to go upon the stock exchange and buy shares as a speculation. To permit a corporation to do so would permit it to intrust its success or failure to the management of others.

First Nat'l Bk. v. *Converse*, 200 U.S. 425 (436-7).

Anyone seeking to set aside a state statute as repugnant to the Federal Constitution, must show that he is within the class with respect to whom the act is unconstitutional and that the alleged constitutional features injure him.

Malbackodt, etc. v. *St. Louis*, 238 U.S. 41(49).

One who would strike down a state statute as violative of the Federal Constitution must show that he is within the class with respect to whom the act is unconstitutional

and must show that the alleged unconstitutional feature injuries him and so operates to deprive him of his rights protected by the Federal Constitution.

Plymouth, etc. v. *Pennsylvania*, 232 U.S. 531.

Statutes are prospective; Questions of violations of due process as to procedure arise most frequently in the case of the judiciary (as witness the decree of the Illinois Appellate Court presently). Questions of violations of due process as a matter of substance arise most frequently in the case of the legislative branch of the government (as displayed here by setting forth Sec. 157.156 of Chap. 32 of the Statutes of the State of Illinois). The Supreme Court has jurisdiction because the state court made an erroneous decision.

A litigant can be heard to question a statute's validity only when and in so far as it's being applied to his disadvantage.

Dahnke v. *Bondurant*, 257 U.S. 282 (289).

The general rule against the retroactive operation of a statute applies with particular force to the code and all changes resulting from changed language will operate prospectively only ("codification contemplates, implies and produces continuity of existing law in clarified form rather than its interruption").

Sec. 3713 Sutherland, Vol. 2.

U. S. v. *Grainger*, 346 U.S. 235.

The jurisdiction of this Court to review a judgment of a State Court the effect of which is to deny a federal right, cannot be avoided by placing such judgment on non-federal grounds which are plainly untenable. It is therefore, within our province to inquire not only whether the right was denied in express terms, but also whether it was denied

in substance and effect, as by putting forward non-federal grounds for decision that were without fair and substantial support. It is well settled rule that "money got through imposition" may be recovered back; and, as this court has said on several occasions, "the obligation to do justice rests upon all persons natural and artificial, and if money or property is obtained without authority, the law, independent of any statute will compel restitution or compensation".

Ward et al. v. Board, etc., 253 U.S. 17 (22 & 24).
Broadwell v. Board, etc., 253 U.S. 25 (26).
Wolf v. State Ct., 364 U.S. 177.

Only those who have been injured as a result of a denial of constitutional rights can invoke jurisdiction of the Supreme Court of the United States on constitutional questions.

Fuller v. Nicholson, etc. 311 U.S. 531.
Alabama etc. v. McAdory, 325 U.S. 450.
Saltonstall v. Saltonstall, 276 U.S. 260.
Virginia Coupon Cases, 25 Fed. 654.

Constitutional provisions for the security of persons or property should be liberally construed.

Boyd v. U. S., 116 U.S. 616.
Chicago v. Sturges, 157 Fed. 783.

Every question arising under the Constitution may, if properly raised in a state court, come ultimately to the Supreme Court.

Dewack v. Rogers, 268 F. 2d 928.

If state court errors constitute a deprivation of Constitutional rights, such errors may be reviewed in the United States Supreme Court.

Hanna v. Home etc., 281 F. 2d 298 (303).

The final decree in the trial court, the final order of the Appellate Court, affirming the decree of the lower court together with the Illinois Supreme Court's decision to stand aloof, were not in keeping with the dogma expressed in the Fourteenth Amendment to the Constitution of the United States.

CONCLUSION.

The erroneous decree entered in the trial court under No. 60 S 9097 and the methods resorted to in arriving at such decree were not only not in conformity with the doctrines of equity but contrary to the principles promulgated by the Fourteenth Amendment to the Constitution of the United States, particularly that portion thereof stressed by appellant in his jurisdictional statement.

The erroneous order entered in the Appellate Court under No. 48469, confirming the decree in the trial court and methods resorted to in arriving at such findings were contrary to the dictates of the Fourteenth Amendment of the Constitution of the United States.

The erroneous decree handed down by the trial court admittedly not qualified to sit and, which was otherwise unconstitutional according to the terms of the Fourteenth Amendment to the Constitution of the United States, particularly the "due process" clause together with the erroneous, ill conceived order of the Appellate Court affirming the lower court decree, renders the appellant worthy and well qualified to stand before the Supreme Court of the United States as the victim of the illegal workings of non-adherents to the principles established by said Constitution, thereby endowing him with adequate grounds to satisfy the demands of Sec. 1257 (2), Title 28 of the United States Code.

The legislative history of the Clayton Act demonstrates that the purpose of Sec. 7 was to prevent certain evils peculiar to stock acquisitions, particularly to secret ownership.

U. S. v. Du Pont; 353 U.S. 586 (612).

The acquisition of stock of foreign corporations is the offense. When the acquisition has been made the offense is complete.

U. S. v. Maryland etc., 167 F. Supp. 799 (801).
Ramsburg etc. v. American etc., 231 F. 2d 333.
Title 15, Clayton Act, Sec. 7, first paragraph.

If the tenets of objective law had been adhered to throughout this suit, the principles of the Fourteenth Amendment to the Constitution of the United States would have been further perpetuated and admirably so, leaving no need for this appellant to pray that the motion of appellees to dismiss this appeal be denied.

Therefore, appellant contends that the motion to dismiss should be denied.

Respectfully submitted,

CHARLES W. JAMISON,
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